

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

v.

BERNARD L. MADOFF,

Defendant-Appellant.

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x

No.: _____

**DECLARATION OF IRA LEE SORKIN IN SUPPORT OF
DEFENDANT BERNARD L. MADOFF'S MOTION
FOR A STAY AND REINSTATEMENT OF
BAIL PENDING SENTENCING PURSUANT TO 18 U.S.C. § 3143(a)**

IRA LEE SORKIN, pursuant to 28 U.S.C. § 1746, declares the following under penalties of perjury:

1. I am a partner with the law firm of Dickstein Shapiro LLP, attorneys for Defendant Bernard L. Madoff ("Mr. Madoff").
2. I am fully familiar with the facts and circumstances surrounding this declaration and I submit this declaration in support of Mr. Madoff's Motion Pursuant to Federal Rule of Appellate Procedure 9(a) For A Stay And Reinstatement of Bail Pending Sentencing Pursuant to 18 U.S.C. § 3143(a).
3. Annexed hereto as Exhibit A is a true and correct copy of the Complaint filed by the Government on December 11, 2008.
4. Annexed hereto as Exhibit B is a true and correct copy of an Appearance Bond, including bail conditions, issued on December 11, 2008.
5. In preparation for Mr. Madoff's arraignment on December 11, 2008, Pre-Trial Services interviewed Mr. Madoff, and did not recommend pretrial detention. Instead, Pre-Trial

Services recommended even less restrictive terms of release – a personal recognizance bond signed by two financially responsible individuals – than were ultimately ordered by United States Magistrate Judge Douglas Eaton.

6. All bail conditions were met by Mr. Madoff by the deadline of December 16, 2008, except that Mr. Madoff could not obtain two of the three additional co-signers for the personal recognizance bond.

7. Annexed hereto as Exhibit C is a true and correct copy of an order modifying bail conditions, issued by United States Magistrate Judge Gabriel W. Gorenstein on December 17, 2008.

8. On December 18, 2008, counsel for Mr. Madoff and the Assistant United States Attorney discussed their concern for Mr. Madoff's safety due to the media response to his court visit on December 17, 2008.

9. Annexed hereto as Exhibit D is a true and correct copy of a written request by Assistant United States Attorney Marc O. Litt to modify Mr. Madoff's bail conditions, with the consent of Mr. Madoff, so ordered by United States Magistrate Judge Theodore H. Katz on December 19, 2008.

10. Annexed hereto as Exhibit E is a true and correct copy of an Order on Consent Imposing Preliminary Injunction, Freezing Assets and Granting Other Relief Against Defendants, issued in connection with the case *SEC v. Bernard L. Madoff, et. al.*, 08 Civ. 10791 (LLS), on December 18, 2008 by United States District Judge Louis L. Stanton.

11. Annexed hereto as Exhibit F is a true and correct copy of a Statement of Financial Condition of Bernard L. Madoff, filed in connection with *SEC v. Bernard L. Madoff, et. al.*, 08 Civ. 10791 (LLS), on December 31, 2008.

12. Shortly after Irving Picard's appointment as SIPC Trustee and at Mr. Madoff's request, Mr. Picard and the Government were advised that Mr. and Mrs. Madoff were willing to relinquish many of their assets, including their properties in Palm Beach, and Antibes, France, four boats, and three cars. Since that time, Mr. Madoff and the Government have created a mechanism by which assets can be lawfully transferred, by, among other things, lifting freeze orders with respect to certain assets and entering into interlocutory sales agreements with the consent and approval of the Government.

13. In January 2009, the Government sought to detain Mr. Madoff, arguing that Mr. Madoff posed a risk of flight and danger to community – not that Mr. Madoff violated any specific bail conditions.

14. Annexed hereto as Exhibit G is a true and correct copy of an Opinion and Order denying the Government's motion to remand Mr. Madoff, issued by United States Magistrate Judge Ronald L. Ellis on January 12, 2009.

15. Annexed hereto as Exhibit H is a true and correct copy of a letter from Assistant United States Attorney Marc Litt to United States Magistrate Judge Ronald L. Ellis on January 12, 2009.

16. Annexed hereto as Exhibit I is a true and correct copy of the transcript from the January 14, 2009 bail hearing in front of United States District Court Judge Lawrence M. McKenna.

17. Annexed hereto as Exhibit J is a true and correct copy of an order modifying Mr. Madoff's bail conditions, issued by United States District Judge Lawrence M. McKenna on January 16, 2009.

18. On March 6, 2009, the Government communicated its view to counsel for Mr. Madoff that Mr. Madoff was facing a maximum sentence of 150 years.

19. Annexed hereto as Exhibit K is a true and correct copy of the Information against Mr. Madoff filed by the United States Attorney for the Southern District of New York on March 10, 2009.

20. Annexed hereto as Exhibit L is a true and correct copy of the transcript from the *Curcio* Hearing in front of United States District Court Judge Denny Chin on March 10, 2009.

21. Annexed hereto as Exhibit M is a true and correct copy of the transcript from the March 12, 2009 plea allocution, in which United States District Court Judge Denny Chin ordered Mr. Madoff remanded.

22. Annexed hereto as Exhibit N is a true and correct copy of the order revoking Mr. Madoff's bail, remanding him, and denying his request for a stay of remand pending appeal, issued on March 12, 2009.

I declare that under penalty of perjury that the foregoing is true and correct.

Dated: March 13, 2009
New York, New York

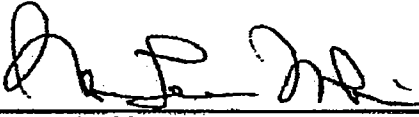

Ira Lee Sorkin

EXHIBIT F

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
STATEMENT OF FINANCIAL CONDITION OF
BERNARD L. MADOFF

I. Statement of Assets and Liabilities as of December 31, 2008:

A. Assets:

List all assets owned by you, your spouse, or any other member of your household, directly or indirectly, and all assets which are subject to your or your spouse's possession, enjoyment, or control, regardless of whether legal title or ownership is held by a relative, trustee, lessor, or any other intermediary, including but not limited to the categories indicated below.

1.	Cash	<u>\$17,031,717</u>
2.	Cash Surrender Value of Insurance	<u>\$0</u>
3.	Accounts Receivable	<u>\$0</u>
4.	Loans or Notes Receivable	<u>\$4 to \$7 million</u>
5.	Real Estate	
	a. 133 East 64th Street, Apt 12A, NY, NY 10065 ("NY Apt")	<u>\$7 million</u>
	b. 216 Old Montauk Highway, Montauk, NY 11954 ("Montauk")	<u>\$3 million</u>
	c. 410 North Lake Way, Palm Beach, FL 33480 ("Palm Beach")	<u>\$11 million</u>
	d. Cap d' Antibe, France ("France")	<u>\$1 million</u>
	Total	<u>\$22 million</u>
6.	Furniture, Household Goods, and Fine Art	
	a. NY Apt	<u>\$4,087,710</u>
	b. Montauk	<u>\$1,585,500</u>
	c. Palm Beach	<u>\$2,460,412</u>
	d. France	<u>\$900,000</u>
	e. BMIS Offices, 885 3rd Avenue, NY, NY 10022	<u>\$886,900</u>
	Total	<u>\$9,920,522</u>
7.	Automobiles	<u>\$25,000</u>
8.	Securities	<u>\$45 million</u>
9.	Partnership Interests	TBD

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10. Net Value of Ownership Interest in Business	<u>\$700 million</u>
11. Individual Retirement Accounts (IRAs)	<u>\$0</u>
12. Keogh Accounts or Plans	<u>\$0</u>
13. 401(k) Accounts or Plans	<u>\$0</u>
14. Other Pension Assets	<u>\$0</u>
15. Annuities	<u>\$0</u>
16. Prepaid Expenses or Liabilities	
Prepaid 2009 Taxes for Palm Beach residence	<u>\$151,000</u>
17. Credit Balances on Credit Cards	<u>\$0</u>
18. Other (Itemize)	<u>\$0</u>
19. Jewelry	<u>\$2,624,340</u>
20. Fine Art is included in 6 above	<u> </u>
21. BLM Air Charter (50% interest in air craft)	<u>\$12 million</u>
22. Net Jet, 100 hours of prepaid air travel	<u>TBD</u>
23. 2006 Leopard yacht ("Bull") located in France	<u>\$7 million</u>
24. Boat slip in France related to item 23	<u>\$1.5 million</u>
24. Boat ("Sitting Bull") in Montauk, NY	<u>\$320,000</u>
25. Rybovich fishing boat ("Bull"), Palm Beach	<u>\$2.2 million</u>
26. Small boat ("Sitting Bull") and trailer, Palm Beach	<u>\$25,000</u>
27. Steinway piano (NY apt)	<u>\$39,000</u>
28. Silverware (NY apt)	<u>\$65,000</u>

Total Assets

\$823 to 826 million

B. Liabilities:

List all liabilities, including but not limited to the items listed below.

1. Mortgages	<u>\$0</u>
2. Auto Loans	<u>\$0</u>
3. Credit Card Debt	<u>\$100,000</u>

4.	Loans on Insurance Policies	<u>\$0</u>
5.	Installment Loans	<u>\$0</u>
6.	Other Loans or Notes Payable	<u>\$0</u>
7.	Accrued Real Estate Taxes	\$151,000
8.	Judgments/Settlements Owed	<u>\$0</u>
9.	Leopard boat	<u>\$5,000</u>
10.	Auto Lease	\$10,000
11.	Tax lien on Montauk boat	TBD

Total Liabilities	<u>\$265,000</u>
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C. Net Worth (Assets Minus Liabilities)	<u>\$823 to \$826 million</u>
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- D. For each asset with a fair market value of greater than \$1000, describe the asset, state the form of ownership (e.g., individual, joint, beneficial interest), provide a fair market value and explain how fair market value was determined (e.g., appraisal, comparison, estimate, etc.).

I. Insurance Appraisals

Attached hereto are 4 binders, identified as replacement value appraisals for insurance coverage for specific locations, prepared by Appraisal Resource Associates, Inc:

1. Residence - 133 East 64th Street, Apartment 12A, NY, date of valuation October 20, 2005 (Assets appraised for \$4,087,710);
2. Office - BMIS 885 3rd Avenue, NY, date of valuation January 6, 2006 (Assets appraised for \$886,900);
3. Residence - 410 North Lake Way, Palm Beach, FL, date of valuation January 28, 2006, Volume I (Assets appraised for \$2,460,412);
4. Residence 410 North Lake Way, Palm Beach, FL, date of valuation January 28, 2006, Volume II, Photographs.

II. Other assets

1. With regard to the residence located in Montauk, New York, there are currently no detailed appraisals. The estimated value of the furniture and household items for this residence is approximately \$1,585,500.

2. With regard to the residence located in Cap d' Antibes, France, there are currently no detailed appraisals. The estimated value of the furniture and household items for this residence is approximately \$900,000.

3. Cash.

a. There is a joint, Bernard and Ruth Madoff, Bank of New York account no 120-0202690 and is equal to approximately \$21,717;

b. There is a Ruth Madoff Wachovia account, no. 1010146337325, that contains approximately \$17,010,000.

4. Ruth Madoff loaned Mark and/or Andrew Madoff between \$4 and \$7 million for the purchase of properties located in New York and Nantucket.

5. Except for Item b below, all the residences are owned by Ruth Madoff:

a. New York Apt, purchased 1984 by Ruth Madoff and estimated to be worth \$7 million;

b. Montauk, New York, (jointly owned by Ruth and Bernard Madoff) purchased 1979 and estimated to be worth \$3 million;

c. Palm Beach, Florida, purchased 1994 by Ruth Madoff and estimated to be worth \$11 million;

d. Cap d' Antibes, France, purchased 2000 or 2001 by Ruth Madoff, estimated to be worth \$1 million

6. The automobiles are owned by Ruth Madoff:

a. 1999 Mercedes SLK convertible (FL) (est. value \$10,000);

b. 2001 Mercedes station wagon (NY) (est. value \$5,000) ;

c. 2004 Volkswagen Touareg (est. value \$10,000).

7. Securities:

a. Ruth Madoff owns approximately \$45 million in municipal bonds (estimated market value). All contained in the Cohmad account. Account information will be provided to the Commission Staff.

b. Bernard Madoff owns securities held in several institutions (the value is estimated to be less than \$200,000):

- i. Lehman Brothers;
- ii. Morgan Stanley;
- iii. Bear Stearns;
- iv. M&T;
- v. Fidelity.

Mr. Madoff does not currently have access to the records.

8. Ruth Madoff owns limited partnership interests through Sterling Equities in New York. The value of her interests in the LPs cannot be calculated presently.

9. Bernard Madoff's interest in BMIS is estimated to be worth approximately \$700 million, based on remaining capital.

10. Jewelry owned by Ruth Madoff has been appraised for \$2,624,340. An itemized insurance appraisal report exists and will be provided to the Commission Staff.

11. BLM Air Charter (50% interest in air craft) \$12 million. Ownership information to be provided to Commission Staff.

12. Interest in Net Jet, 100 hours of prepaid private air travel. Valuation and ownership interest to be provided to Commission Staff.

13. Ruth Madoff's company the Yacht Bull owns the 2006 Leopard yacht located in France which is estimated to be worth \$7 million (USC).

14. Ruth Madoff's company the Yacht Bull owns the boat slip in France and is estimated to be worth \$1.5 million (US\$).
15. Ruth Madoff owns the boat "Sitting Bull" located in Montauk, NY and is estimated to be worth \$320,000.
16. Bernard Madoff owns the Rybovich fishing boat, FL and is estimated to be worth \$2.2 million.
17. Ruth Madoff owns a small boat "Little Bull" and trailer, FL and is estimated to be worth \$25,000.
18. Ruth Madoff owns the Steinway piano (NY apt) and is estimated to be worth \$39,000.
19. Ruth Madoff owns silverware (NY apt) and is estimated to be worth \$65,000.

E. For each liability, indicate the date incurred; the original amount of the liability; the length of the obligation; the interest rate, the collateral or security; if any, who is responsible for the obligation; the outstanding balance; the name(s) and address(es) of all obligee(s); and your relationship (if any) to each creditor.

1. The BMLIS corporate AMEX credit card debt is approximately \$78,000 and is related to the last billing cycle.
2. The Visa card is jointly owned by Bernard and Ruth Madoff. The debt amount is \$20,000.
3. The Palm Beach residence is owned by Ruth Madoff and has a tax obligation of \$151,000 due January 2009 *which has been paid.* (PM)
4. Ruth Madoff currently is leasing a BMW that is located in Palm Beach, Florida. If the lease is terminated prematurely, there may be a liability depending on the residual value of the vehicle. The liability has been estimated to be \$10,000 if the lease is terminated early.

F. List all securities or commodities brokerage accounts and accounts at banks or other financial institutions in your name; under your control; in which you have or had a beneficial interest; or to which you are or were a signatory since January 1, 1972. For each account, specify the location of the account, account number and balance in cash or securities.

1. Bernard Madoff had signatory authority over all BMIS accounts. The details regarding accounts, banks, and locations are currently unavailable to Mr. Madoff.
2. Bernard Madoff has personal security accounts with the following institutions:

- i. Lehman Brothers;
- ii. Morgan Stanley;
- iii. Bear Stearns;
- iv. M&T;
- v. Fidelity.

The records that would show account balances are currently unavailable to Mr. Madoff.

3. Ruth Madoff has a securities account with COHMA Securities that holds municipal bonds valued at approximately \$44 million

- G. List any 401(k) plans, pension plans, Keogh plans, individual retirement accounts, profit sharing plans, thrift plans, life insurance policies or annuities, in which you have an interest, vested or otherwise. For each account or plan, specify the account name, the location of the account, account number and balance, and the terms of withdrawal or loan options.

None.

- H. List all credit cards or lines of credit in your name or to which you are a signatory, including the name of the credit issuer, account number, credit limit, and amount of indebtedness.

1. Corporate AMEX, debit balance of \$78,500.
2. Joint Ruth and Bernard Madoff Visa, debit balance of \$20,000.

II. Cash Flow Information

A. Income/Receipts

List all money or other income received from any source on a monthly basis by you, your spouse, or any other member of your household, identifying the source, recipient, and amount. For any income received on a basis other than monthly, convert to a monthly basis for the purposes of this statement.

<u>Description</u>	<u>Source</u>	<u>Amount</u>
1. Salary/Wages	_____	\$0
2. Commissions/Advances	_____	\$0
3. Consulting Fees	_____	\$0
4. Dividends	_____	\$0
5. Interest	Ruth Madoff bonds	\$1.5 million

6. Annuities	_____	\$0
7. Pensions	_____	\$0
8. Rents/Royalties	_____	\$0
9. Sales of Assets (Net)	_____	\$0
10. Repayment of Loans	_____	\$0
11. Payments on obligations made on your behalf by others	_____	\$0
12. Fringe Benefits (e.g., car)	_____	\$0
13. Alimony/Child Support	_____	\$0
14. Gifts/Bonuses	_____	\$0

Total Receipts

\$1.5 million

B. Expenses/Disbursements

List all monthly expenditures for whatever purpose for you or your household for the past 12 months, identifying the purpose and the amount, including projected expenses. For any expenditure which varies from month to month, indicate a range of amounts and the average amount on a monthly basis.

1. 133 East 64th Street, Apt 12A, NY, NY 10065

<u>Description</u>	<u>Amount</u>
1. Mortgage/Rent	<u>\$0</u>
2. Food	<u>\$800</u>
3. Utilities	
a. Electric	\$700
b. Cable/DSL	\$370
c. Phone (home and two cell)	\$700
4. Payment on Loans	<u>\$0</u>
5. Real Estate Taxes	TBD
6. Insurance Premiums	
a. Auto	<u>\$370.42</u>
b. Home Owners	<u>\$5,863.67</u>
7. Medical Expenses	<u>\$200</u>
8. Automobile Expenses	<u>\$0</u>
9. Alimony/Child Support	<u>\$0</u>
10. Income Taxes	<u>\$0</u>
11. Monthly Maintenance Fee	<u>\$6,500</u>
12. Transportation (taxi, subway)	<u>\$300</u>
13. Doctor visits	<u>\$250</u>
14. Entertainment	<u>\$70</u>
15. Housekeeper	<u>\$2,860</u>
16. Gardener	<u>\$885</u>
17. * Casale Associates Personal Security	<u>\$140,000</u>
18. * Legal fees	<u>\$100,000</u>
19. * Building Security	<u>\$14,000</u>

Total NY Apt Expenses/Disbursements \$293,869.09*

*If you anticipate unusual expenses in the coming 12 months, please describe them.

2. 216 Old Montauk Highway, Montauk, NY 11954

<u>Description</u>	<u>Amount</u>
1. Mortgage/Rent	<u>\$0</u>
2. Food	<u>\$0</u>
3. Utilities	<u>\$0</u>
a. Gas	\$210
b. Electric	\$750
c. Phone	\$150
d. Plumbing	\$100
4. Payment on Loans	<u>\$0</u>
5. Real Estate Taxes (\$16,626 annual)	<u>\$1,385.50</u>
* tax due immediately	<u>\$8,313</u>
6. Insurance Premium (Home owner)	<u>\$1,681.34</u>
7. Medical Expenses	<u>\$0</u>
8. Automobile Expenses	<u>\$0</u>
9. Alimony/Child Support	<u>\$0</u>
10. Income Taxes	<u>\$0</u>
11. Exterminator	<u>\$60</u>
12. Home maintenance (yard)	<u>\$667</u>
13. Home Security including home visits	<u>\$565</u>
14. Boat "Little Bull" storage	<u>\$835</u>
15. Boat Insurance	<u>\$431</u>

Total Montauk Home Expenses/Disbursements \$15,147.84*

*If you anticipate unusual expenses in the coming 12 months, please describe them.

3. 410 North Lake Way, Palm Beach, FL 33480

<u>Description</u>	<u>Amount</u>
1. Mortgage/Rent	<u>\$0</u>
2. Food	<u>\$0</u>
3. Utilities	<u>\$0</u>
a. Water	\$535
b. Gas	\$117
c. Irrigation	\$50
d. Electric	\$700
4. Payment on Loans	<u>\$0</u>
5. Real Estate Taxes (annual \$151,000, prepaid)	<u>\$0</u>
6. Insurance Premiums	
a. Home owners	<u>\$3454.44</u>
b. Flood	<u>\$3750</u>
c. Wind	<u>\$5833.33</u>
d. Auto (two vehicles)	<u>\$278.08</u>
e. Boat (Rybovich)	<u>\$3,333</u>
7. Medical Expenses	<u>\$0</u>
8. Automobile Expenses (lease on BMW 530i)	<u>\$850</u>
9. Alimony/Child Support	<u>\$0</u>
10. Income Taxes	<u>\$0</u>
11. Warehouse boat storage	<u>\$640</u>
12. House maintenance	<u>\$3,200</u>
13. Boat Capt.	<u>\$5,250</u>
14. Boat Maintenance	<u>\$3,448.07</u>

Total Palm Beach Expenses/Disbursements	<u>\$31,438.92*</u>
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*If you anticipate unusual expenses in the coming 12 months, please describe them.

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4. Cap d' Antibe, France residence

<u>Description</u>	<u>Amount</u>
1. Utilities/Taxes	<u>\$2,500</u>
2. Food	<u>\$0</u>
3. Utilities	<u>\$0</u>
4. Payment on Loans	<u>\$0</u>
5. Real Estate Taxes	<u>\$0</u>
6. Insurance Premiums	
a. Home owners	<u>\$1,334</u>
b. Boat insurance (Leopard)	<u>\$4,667</u>
c. Auto insurance	<u>\$50</u>
7. Medical Expenses	<u>\$0</u>
8. Automobile Expenses	<u>\$0</u>
9. Alimony/Child Support	<u>\$0</u>
10. Income Taxes	<u>\$0</u>
11. Home Security including home visits	<u>\$800</u>
12. Boat (Leopard) Marina coop maintenance	<u>\$3,200</u>
13. Boat (Leopard) Maintenance	<u>\$2,667</u>
14. Boat Capt. (Leopard)	<u>\$5,600</u>

Total Expenses/Disbursements	<u>\$20,818*</u>
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*If you anticipate unusual expenses in the coming 12 months, please describe them.

Total Expenses/Disbursements for all homes	<u>\$346,757.85/month</u>
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CONFIDENTIAL TREATMENT
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III. Other Information

- A. List any disbursement having a value of \$1000 or more, made on your behalf, or on behalf of your spouse or children, by any other person or entity since January 1, 1972, the amount of the disbursement, and the name and address of the person or entity who made the disbursement.

To be resolved with Commission staff.

- B. List all transfers of cash in an amount of \$1000 or more, or assets or property with a cost or fair market value of \$1000 or more, made by you since January 1, 1972, and, if applicable, identify the value of the asset, the consideration received, and the relationship of the transferrer to the transferee, or indicate that no such transfers have been made.

To be resolved with Commission staff.

- C. Identify any financial institution accounts (other than those identified in Item I.F. above) in which you have deposited more than \$1000 since January 1, 1972, or indicate that no such deposits have been made.

To be resolved with Commission staff.

- D. List all dependents, their ages, and whether or not they reside with you.

Not applicable.

- E. Attach federal income tax returns filed by you or on your behalf (including personal, trust, or business returns) during the years 1972 through 2008.

At this time, the records are unavailable.

- F. Attach any federal gift tax returns filed by you or your spouse during the years 1972 through 2008.

At this time, the records are unavailable.

- G. Attach any financial statement which the declarant has prepared during the years 1972 through 2008 for any purpose (e.g., such as a financial statement provided to a bank to secure a loan).

Forms related to SEC 17a-5.

- H. *Attach copies of documents evidencing all outstanding loans for which you or your spouse is either a lender or borrower.*

No records are currently available.

- I. *Attach copies of all securities, commodities, bank, or other financial institution account statements for the past 12 months in your or your spouse's name, under your or your spouse's control, or in which you or your spouse has a beneficial interest.*

No records are currently available.

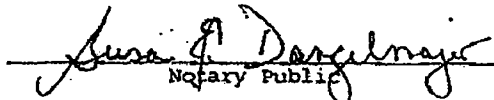
CONFIDENTIAL TREATMENT
REQUESTED UNDER FOIA

Under penalties of perjury, I declare that I have examined the information given in this statement, and attached hereto, and, to the best of my knowledge and belief, it is true, correct, and complete. I further declare that I have no assets, owned either directly or indirectly, or income of any nature other than as shown in, or attached to, this statement. I understand that any material misstatements or omissions made by me herein or in any attachments hereto may constitute criminal violations, punishable under 18 U.S.C. 1001.


Bernard L. Madoff

12/31/08
Date

Sworn before me this 31st day of December, 2008.


Notary Public
SUSAN E. DANGELMAIER
Notary Public, State of New York
No. 01E86071856
Qualified in New York County
Commission Expires March 25, 2010

CONFIDENTIAL TREATMENT
REQUESTED UNDER FOIA